

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SBC Pacific Bell Telephone Company (U 1001 C), a corporation, for Authority to Categorize Local DA Service as a Category III Service.

Application 02-07-050
(Filed July 31, 2002)

**OPINION ON REQUEST FOR INTERVENOR COMPENSATION
BY TURN AND GREENLINING INSTITUTE****I. Summary**

This decision grants intervenor compensation to The Utility Reform Network (TURN) of \$54,615.25 and to Greenlining Institute (Greenlining) of \$41,400.55 for their contributions to Decision (D.) 04-06-016.

II. Background

SBC Pacific Bell Telephone Company (SBC) asked the Commission to recategorize its local directory assistance service (DA) from a Category II to a Category III service. Approval of this request would have substantially reduced the Commission's oversight of the pricing and quality of the service. Office of Ratepayer Advocates (ORA) and TURN protested the application. Following a prehearing conference (PHC) and prior to development of a record in the case, the assigned Administrative Law Judge (ALJ) issued a proposed decision dismissing the application on the basis that the issue should be deferred until after the Commission's decision on related policy matters. SBC objected to this proposed decision. Subsequently, Commissioner Kennedy issued an alternate decision that would have kept the proceeding open. Ultimately, the Commission

withdrew the proposed decision and the alternate and decided to move forward with the application.

The Assigned Commissioner and ALJ issued a scoping memo in September 2003 scheduling evidentiary hearings, public participation hearings and service of testimony. On November 14, 2003, SBC filed a “Notice of Withdrawal of Application,” which the Commission subsequently rejected for filing as improper. SBC later filed a motion seeking to withdraw its application. The ALJ issued a proposed decision granting the withdrawal on February 5, 2004, which the Commission adopted on June 9, 2004. The final order, D.04-06-016, closes the proceeding with prejudice and states the Commission’s intent to reject a re-filing of the application for a period of two years. The order invited TURN and Greenlining to file for compensation in this proceeding even though the Commission granted SBC’s motion to withdraw the application and therefore issued no final order on the merits of SBC’s proposal. TURN and Greenlining did file for compensation, and no party opposed either request.

III. Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-12, requires California jurisdictional utilities to pay the reasonable costs of an intervenor’s participation if the intervenor makes a substantial contribution to the Commission’s proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specific). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. the intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

Of the foregoing, the first four requirements are essentially procedural. Briefly, TURN and Greenlining filed timely notices of intent to claim compensation in this proceeding. The Assigned ALJ found both eligible to receive compensation by ruling dated March 25, 2003. Both TURN and Greenlining filed timely requests for compensation. Greenlining filed its request for compensation on August 9, 2004. TURN filed its request for compensation on August 13, 2004. TURN and Greenlining have both satisfied all of the procedural requirements necessary to request intervenor compensation.

We next analyze the substance of their respective contributions and the reasonableness of the requested compensation.

IV. Substantial Contributions of TURN and Greenlining

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (*See* § 1802(h).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§ 1802(i) and 1802.5.) As described in § 1892(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.¹

With this guidance in mind, we turn to the claimed contributions TURN and Greenlining made to the proceeding.

A. TURN

TURN states it participated in all aspects of this proceeding, including filing comments, attending prehearing conferences, and preparing for hearings. It drafted testimony, responded to procedural motions and conducted discovery. TURN observes that although D.04-06-016 does not specify TURN's

¹ D.98-04-059, 79 CPUC2d 628, 653 (1998).

contributions in the proceeding, it nevertheless acknowledges the time and effort that TURN dedicated to developing a record and preparing to litigate the issues in this proceeding. TURN also observes that the proposed decision of ALJ Bemmesderfer (which was ultimately withdrawn from the Commission's decision-making agenda) reflects TURN's position on the issues, specifically, that the Commission should reject SBC's application and should address other more important issues. The proposed ALJ decision acknowledged TURN's position that SBC would not be harmed by a dismissal of the case because directory assistance services were priced above cost, thus assuring SBC adequate compensation.

TURN states it also contributed to the decision that ultimately dismissed the application, D.04-06-016. Its comments on the proposed decision, filed jointly with ORA and Greenlining, proposed that SBC must not be permitted to refile its request for recategorization within five years after the application's dismissal, and advocated for the Commission's reaffirmation of its support for public participation hearings. The joint comments also proposed that SBC be required to submit to discovery in open proceedings.

Although the final decision in this case does not address the merits of SBC's proposal, TURN's participation "substantially assisted the Commission in the making of its order...", consistent with Section 1802(h). As TURN observes, the Commission has previously awarded intervenor compensation where it did not reach a final decision on the merits of a utility application. Although D.04-06-016 resolved the issues in ways that depart slightly from the proposals of TURN and the other consumer groups, the order is generally consistent with TURN's proposals and parallels the logic TURN presented. We therefore find

that TURN substantially contributed to the ALJ's proposed decision and the final decision in this case.

B. Greenlining

Greenlining states that the Commission substantially adopted the recommendations it presented jointly with TURN and ORA after SBC filed its motion for dismissal. Consistent with these recommendations, D.04-06-016 found that the Commission has sole authority to close a proceeding. The Commission earlier agreed with Greenlining that the Commission should conduct public participation hearings. These were not held, as the application ultimately was not resolved on the merits, but the need for public participation hearings was affirmed in D.04-06-016. We agree that Greenlining made a substantial contribution to D.04-06-016, consistent with the discussion regarding TURN's participation.

V. Reasonableness of Requested Compensation

Having determined the scope of a customer's substantial contribution, we consider whether the requested compensation is reasonable. The components of a request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable

relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

A. TURN

TURN requests compensation of \$54,615.25, including \$35,064.38 for attorney and experts' time, \$19,012.50 for expert consulting services and \$538.37 for other direct expenses. Attorney time related to compensation was discounted by 50%. TURN submitted detailed logs showing the time expended by TURN's employees and consultants and the direct expenses that were incurred.

TURN requests compensation for 167.25 hours of time for its in-house experts and attorneys and 58.5 hours for its outside expert witness. This request is reasonable considering that TURN filed comments on two proposed decisions, conducted discovery and drafted testimony in this proceeding.

TURN requests new hourly rates for several of its experts. The Commission has approved a rate of \$250 an hour for work Christine Mailloux performed in 2001 and \$275 for work performed in 2002. For work completed in 2003 and 2004, TURN seeks an increase of her hourly rate to \$300 and \$325 respectively. Mailloux graduated from law school in 1993 and has worked since then in various organizations as a telecommunications attorney. TURN argues that her experience should qualify her for a rate equivalent to that of a junior partner at a San Francisco law firm. TURN refers to the publication "Of Counsel" which routinely surveys local law firms with regard to their billing rates. As of 2002, that publication shows TURN's requested rates for Mailloux to be at the low end of rates billed by partners in large San Francisco law firms.

We adopt the rates TURN requests for Mailloux as it is comparable to those for lawyers with Mailloux's training and experience.

TURN requests an hourly rate of \$200 for telecommunications expert Regina Costa for work performed in 2002 and \$215 for work performed in 2003. The Commission has already approved the 2002 rate for Costa. An increase to \$215 for 2003 would represent a percentage change of 7%. This is a reasonable adjustment in light of Costa's experience. TURN's request for Costa is supported and reasonable. We adopt it herein.

TURN seeks an hourly rate for attorney, William Nusbaum of \$340. Nusbaum graduated from law school in 1973 and has worked in several firms and organizations as a telecommunications attorney since then. TURN requests an hourly rate equal to that which the Commission has approved for another TURN attorney, Robert Finkelstein, who has ten years less experience than Nusbaum. TURN's request for Nusbaum is reasonable and we adopt it.

TURN seeks the same \$365 hourly rate we approved in D.03-08-041 for attorney Bob Finkelstein for work performed in 2003 and 2004. We find it reasonable here as well.

TURN seeks an hourly rate of \$325 for consultant Patricia Kravtin for work performed in 2003. TURN represents that this is Ms. Kravtin's usual billing rate for clients. Kravtin has more than 20 years of experience as an expert in the telecommunications and energy industries. She has completed extensive graduate work at MIT consulting firm of Economics and Technology, Inc. and been an active participant in regulatory proceedings in over 30 states and before several federal and international regulatory forums. TURN suggests Kravtin's work compares favorably to that of John Gamboa and Luis Arteaga, both of whom receive \$310 an hour for work performed in 2001. We concur with TURN that Ms. Kravtin's experience and education justify an hourly rate of \$325, and that the amount compares with the approved rates of other experts with

qualifications that are comparable or not as extensive. We herein approve an hourly rate of \$325 for Ms. Kravtin for work performed in 2003.

TURN seeks reimbursement for miscellaneous expenses of \$538.37. Most of these costs are related to postage and copying pleadings in this case. Considering the work completed in this case, TURN's expenses are reasonable and we approve them here. We herein award TURN \$54,615.25 for its contributions to this proceeding, including the final order, D.04-06-016.

B. Greenlining

Greenlining seeks compensation for a total of 130.05 hours. We find the time expended to be reasonable considering that Greenlining filed several rounds of comments on three proposed orders, either individually or jointly with other groups, conducted discovery and worked on strategies for conducting outreach for public participation hearings.

Greenlining requests new hourly rates for some of its attorneys, experts, and staff. The Commission has previously approved the following rates for Gnaizda: \$435 for 2002 and \$450 for 2003. Because less than three hours were spent in 2004 by Gnaizda, we carry over the previously adopted 2003 rate for these hours, as we did for Finkelstein's 2004 rate, without prejudice to Greenlining's ability to seek a new 2004 rate consistent with Resolution ALJ-184.

The Commission has previously approved rates for Greenlining expert, John Gamboa, of \$310 for 2001, and \$330 for 2003. Greenlining seeks rates for Gamboa of \$330 for 2002, \$350 for 2003 and \$380 for 2004. Greenlining calculates these rates by applying a 1998-99 rate for another expert, Terry Murray, and escalating the amount by 7% a year. Greenlining states even with this escalation, Gamboa's rates would be below market rates. Greenlining presents no evidence to support that claim that Gamboa's 2003 rate is or would be below market in

seeking a different rate from that adopted in D.04-08-020 for 2003. Using the rate we approved for Mr. Gamboa in D.03-10-062 for 2001, \$310, we escalate the amount by about 3% to arrive at a 2002 rate of \$320. For 2003, we apply the rate we adopted in D.04-08-020 for Gamboa, which is \$330. Only one hour claimed is for with 2004 and, like we did for Finkelstein and Gnaizda, we apply the 2003 rate for that hour without prejudice to considering a new 2004 rate.

Greenlining seeks hourly rates of \$290 for 2003 and \$310 for 2004 for its attorney, Itzel Berrio. We herein apply the rate adopted in D.04-08-040 for Berrio of \$275 for work performed in 2003. We increase the amount to \$300 for 2004, which is reasonable in light of the “Of Counsel” surveys presented by TURN and the information provided by Greenlining on associate rates. The 300 rate for 2004 is 9% higher than the 2003 rate for Berrio which exceeds the 8% escalator we adopted for 2003 to 2004 rates in ALJ-184. The 2004 rate of \$300 is also fair considering the rate of \$325 an hour we adopt today for Mailloux of TURN, who has four additional years of experience as an attorney.

Greenlining seeks an hourly rate of \$90 for its paralegal, Noelle Abastillas, for work performed in 2003. We herein adopt the rate Greenlining proposes for Abastillas, and which we adopted in D.04-08-040. Greenlining seeks only \$44.05 in miscellaneous expense, which we find reasonable.

1. Fee Enhancement

Greenlining seeks a 20% fee enhancement for its work in this proceeding. Greenlining argues that this additional funding is justified to recognize Greenlining’s efficient use of time in this case. It does not elaborate on why its participation was so exceptional or efficient as to justify a fee enhancement. We do not take issue with the number of hours Greenlining

devoted to this proceeding or the quality of its work. However, compared to other Commission proceedings, the issues here were not among the most complex and the timetable was not among the most demanding. Greenlining did not submit testimony and the matters did not go to hearing. Although Greenlining's constituency may differ to some degree from other parties in this proceeding, the issues Greenlining addressed were similar or identical to those addressed by both TURN and ORA, namely, that the Commission should conduct public participation hearings, that it should not abandon regulation of directory assistance rates, and that it should consider the impacts of directory assistance prices in other jurisdictions and the impacts on low income customers.

We find no justification for a fee enhancement in this case.

VI. Award

As set forth in the tables below, we award TURN \$54,615.25 and Greenlining \$41,400.55 for contributions to this proceeding, including the final order, D.04-06-016.

TURN

Advocate	Year	Hours	Rate	Total
Mailloux	2002	2.5	\$ 275.00	\$ 687.50
Mailloux	2003	59.5	\$ 300.00	\$ 17,850.00
Mailloux	2004	17	\$ 325.00	\$ 5,525.00
Mailloux	2004 comp	9.25	\$ 162.50	\$ 1,503.13
Costa	2002	6.25	\$ 200.00	\$ 1,250.00
Costa	2003	19	\$ 215.00	\$ 4,085.00
Nusbaum	2003	5	\$ 340.00	\$ 1,700.00
Finkelstein	2003	4.75	\$ 365.00	\$ 1,733.75
Finkelstein	2004 comp	4	\$ 182.50	\$ 730.00
Kravtin	2003	58.5	\$ 325.00	\$ 19,012.50
Subtotal				\$ 54,076.88
Expenses				\$ 538.37
Total				\$ 54,615.25

Greenlining

Advocate	Year	Hours	Rate	Total
Gnaizda	2002	12.4	\$ 435.00	\$ 5,394.00
Gnaizda	2003-4	36.8	\$ 450.00	\$ 16,560.00

Gnaizda	2003 comp	0.5	\$ 225.00	\$ 112.50
Gamboa	2002	2	\$ 320.00	\$ 640.00
Gamboa	2003-4	1.4	\$ 330.00	\$ 462.00
Berrío	2002	15.2	\$ 265.00	\$ 4,028.00
Berrío	2002 comp	0.5	\$ 132.50	\$ 66.25
Berrío	2003	32.7	\$ 275.00	\$ 8,992.50
Berrío	2003 comp	0.5	\$ 137.50	\$ 68.75
Berrío	2004	6.4	\$ 300.00	\$ 1,920.00
Berrío	2004 comp	19.4	\$ 150.00	\$ 2,910.00
Abastillas	2003	2.25	\$ 90.00	\$ 202.50
Subtotal				\$ 41,356.50
Expenses				\$ 44.05
Total				\$ 41,400.55

VII. Waiver of Comment Period

Since this decision addresses a request for compensation, the public review and comment on the draft decision is waived pursuant to Section 311(g)(3) and Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedures (Rules).

VIII. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Kim Malcolm is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. TURN was found eligible for an award of compensation in an ALJ ruling dated March 25, 2003 and has filed a timely request for an award of compensation.
2. Greenlining was found eligible for an award of compensation in an ALJ ruling dated March 25, 2003 and has filed a timely request for an award of compensation.
3. TURN made a substantial contribution to this proceeding and D.04-06-016.
4. Greenlining made a substantial contribution to this proceeding and D.04-06-016.
5. The costs of TURN's participation in this proceeding, to the extent they are approved herein, are reasonable.

6. The costs of Greenlining's participation in this proceeding, to the extent they are approved herein, are reasonable.

7. Nothing about this proceeding, nor Greenlining's participation in it, justifies a fee enhancement.

Conclusions of Law

1. TURN's work in this proceeding should be compensated, as set forth herein.

2. Greenlining's work in this proceeding should be compensated, as set forth herein.

3. The Commission should award TURN \$54,615.25 for its contributions to D.04-06-016.

4. The Commission should award Greenlining \$41,400.55 for its contribution to D.04-06-016.

5. Pursuant to Section 311(g)(3) and Rule 77.7(f)(6) of the Commission's Rules, the 30-day public review and comment period for today's decision should be waived.

6. This order should be effective today so that TURN and Greenlining may be compensated without undue delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$54,615.25 for its contributions to Decision (D.) 04-06-016.

2. Greenlining Institute (Greenlining) is awarded \$41,400.55 for its contributions to D.04-06-016.

3. SBC shall, within 30 days of this order, pay to TURN \$54,615.25 plus interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning October 27, 2004 and continuing until full payment is made.

4. SBC shall, within 30 days of this order, pay to Greenlining \$41,400.55 plus interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning October 23, 2004 and continuing until full payment is made.

5. The public review and comment period for today's decision is waived.

6. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decision(s):	D0406016
Proceeding(s):	A0207050
Author:	ALJ Malcolm
Payer(s):	SBC Pacific Bell Telephone Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Greenlining Institute	8/9/04	\$50,668.45	\$41,400.55	No	Failure to justify hourly rate; failure to justify multiplier
The Utility Reform Network	8/13/04	\$54,615.25	\$54,615.25	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Gnaizda	Attorney	Greenlining Institute	\$435	2002	\$435
Robert	Gnaizda	Attorney	Greenlining Institute	\$450	2003	\$450
John	Gamboa	Policy Expert	Greenlining Institute	\$330	2002	\$320
John	Gamboa	Policy Expert	Greenlining Institute	\$350	2003	\$330
Itzel	Berrio	Attorney	Greenlining Institute	\$265	2002	\$265
Itzel	Berrio	Attorney	Greenlining Institute	\$290	2003	\$275
Itzel	Berrio	Attorney	Greenlining Institute	\$310	2004	\$300
Noelle	Abastillas	Paralegal	Greenlining Institute	\$90	2003	\$90
Christine	Mailloux	Attorney	The Utility Reform Network	\$275	2002	\$275
Christine	Mailloux	Attorney	The Utility Reform Network	\$300	2003	\$300
Christine	Mailloux	Attorney	The Utility Reform Network	\$325	2004	\$325
Regina	Costa	Policy Expert	The Utility Reform Network	\$200	2002	\$200
Regina	Costa	Policy Expert	The Utility Reform Network	\$215	2003	\$215
William	Nusbaum	Attorney	The Utility Reform Network	\$340	2003	\$340
Robert	Robert	Attorney	The Utility Reform Network	\$365	2003	\$365
Patricia	Kravtin	Economist	The Utility Reform Network	\$325	2003	\$325

